IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.463 of 2007

Thangaraj @ Madasamy
@ Arakkan @ Karuvayan .. Petitioner

Vs

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai-600 009.

2. The District Magistrate
and District Collector
Virudhunagar District,
Virudhunagar. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.M.K.Subramanian
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner, Thangaraj @ Madasamy @ Arakkan @ Karuvayan Mariappan, son of Rajadurai Nadar, who is the detenu, and who was incarcerated by order dated 26.2.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 26.2.2007

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in Cr.M.P.No.4/2007 against the petitioner Thangaraj @ Madasamy @ Arakkan @ Karuvayan, son of Rajadurai Nadar, aged about 20 years, who confined at Central Prison, Madurai and set aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The order of detention dated 26.2.2007 came to be passed based on the ground case said to have taken place on 27.01.2007 at 9.15 p.m., on the basis of the complaint lodged by one Thiravidamani Selvan on the file of Srivilliputtur Police Station. According to the complainant, the detenu along with three persons formed themselves into an unlawful assembly, armed with deadly weapons and attacked one Annadurai Selvan due to previous enmity arose over local body elections. On noticing the incident, some witnesses came close to the occurrence place. The detenu and his associates threatened the public. The second respondent, taking note of this case as a ground case and finding that there are three adverse cases pending against the detenu for the offences punishable under Section 307 I.P.C. in two cases and Sections 452, 427, 323, 109 and 34 I.P.C. and Section 3(1) of TNPPD Act in one case, having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

3. Since Mr.M.K.Subramanian, learned counsel for the petitioner challenges the impugned order of detention dated 26.2.2007 mainly on the ground of delay in considering the representation dated 10.3.2007 made on behalf of the detenu, we do not propose to go into the other aspects of the case.

4.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

4.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

4.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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4.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

4.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

5. Coming to the case on hand, admittedly, on receipt of the order of detention dated 26.2.2007, a representation was sent to the detaining authority on 10.3.2007, which was received by them on 23.03.2007. Parawar remarks were called for from the Sponsoring Authority on 23.3.2007 and remarks were received from the sponsoring authority on 26.3.2007. The detaining authority sent a report to the Government on 26.3.2007 which was received on 29.3.2007. The Under Secretary dealt with the file on 13.04.2007 and ultimately the representation was rejected on 16.4.2007. It is surprising to notice from the records that the Government took time from 29.3.2007 to 13.04.2007 (15 days) to place the file before the Under Secretary, which is also not properly explained. Even taking note of the intervening public holidays, viz., 31.3.2007, 1.4.2007, 6.4.2007, 7.4.2007 and 8.4.2007 (5 days), the delay of

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ten days in placing the file before the Under Secretary is admittedly unexplained and inexcusable.

6. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

7. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

8. In the instant case, there is delay of ten days in considering the representation, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition. The order of detention dated 26.2.2007 is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ATR

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To:

1. The Secretary to Government,
   Home, Prohibition and Excise Department,
   Fort St. George,
   Chennai-600 009.

2. The District Magistrate
   and District Collector
   Virudhunagar District,
   Virudhunagar.

3. The Superintendent,
   Central Prison,
   Madurai.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government
Public (Law and order)
Fort St. George, Chennai-9.

H.C.P.No.463 of 2007

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